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Attorneys for Plaintiff CRAFT SMITH, LLC

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF UTAH**

CRAFT SMITH, LLC,
a California limited liability company,

Plaintiff,
vs.

EC DESIGN LLC,
a California limited liability company,
Defendant.

Civil No. 2:16-cv-01235-EJF

**COMPLAINT FOR
DECLARATORY JUDGMENT OF
NONINFRINGEMENT**

Magistrate Judge Evelyn J. Furse

Plaintiff Craft Smith, LLC (“Craft Smith”) complains against defendant EC Design LLC doing business as Erin Condren (“EC Design”) for the causes of action alleged as follows:

The Parties

1. Plaintiff Craft Smith is a California limited liability company with its principal place of business located at 19312 Canyon Dr., Villa Park, California 92861 and further offices located at 333 River Park Dr., Provo, Utah 84604.

2. Upon information and belief, EC Design is a California limited liability company with its principal place of business located at 4860 W. 147th St., Hawthorne, California 90250.

Jurisdiction and Venue

3. This action arises under the Copyright Laws of the United States, 17 U.S.C. § 101 *et seq.*, and the Lanham Act, 15 U.S.C. § 1125 *et seq.* As such, the Court has subject matter jurisdiction over this action under 28 U.S.C. § 1338. Inasmuch as this action involves a federal question, subject matter jurisdiction is likewise conferred by 28 U.S.C. § 1331.

4. This action involves a case of actual controversy within the Court's jurisdiction. As such, the remedy of a judicial declaration of the rights and other legal relations of the parties herein is available under the Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202.

5. This Court has personal jurisdiction over EC Design because EC Design has purposely availed itself of the privileges and benefits of the laws of the State of Utah, and regularly conducts business within this State.

6. The Court's exercise of personal jurisdiction over EC Design is consistent with the Constitutions of the United States and the State of Utah.

7. Venue is proper in this Court pursuant to at least 28 U.S.C. § 1391(b)(2).

Factual Background

8. Craft Smith makes and sells products in the personal organizer industry, including but not limited to spiral planner products marketed as the "Creative Year Planner By Recollections," among other planners and products marketed under the "Recollections" brand.

9. Craft Smith distributes the Recollections Planner through Michael's Stores, a nationwide craft supply company.

10. EC Design holds itself out as a manufacturer and seller of similar products, including but not limited to spiral planner products, and specifically including the “LifePlanner” organizer.

11. Craft Smith and EC Design are competitors in the marketplace for day planner products.

12. On November 29, 2016, Craft Smith received a letter from K&L Gates on behalf of EC Design (the “EC Design Letter”). A true and correct copy of the EC Design Letter is attached hereto as Exhibit A.

13. The EC Design Letter identifies EC Design as the owner of, *inter alia*, certain alleged copyrights and alleged trade dress rights in EC Design’s “LifePlanner Organizer” product.

14. The EC Design Letter includes an express allegation of infringement by Craft Smith of EC Design’s alleged copyrights and trade dress rights related to EC Design’s LifePlanner Organizer, and alleges that Craft Smith’s Recollections Planner is an intentional copy of EC Design’s alleged copyrightable expression and trade dress.

15. The EC Design Letter demanded that Craft Smith immediately cease selling or advertising any planner, including the Recollections Planner, that incorporates any design, text, graphic, color combination or other material allegedly found in the EC Design LifePlanner; that Craft Smith notify all distributors to return unsold Recollections Planners to Craft Smith; and that Craft Smith provide an detailed accounting of the number of Recollections Planners sold, the number of Recollections Planners in inventory, and the gross sales to date of Recollections Planners.

16. Craft Smith's Recollections Planners do not infringe any of the alleged copyright or trade dress rights EC Design claims in the EC Design Letter, for at least the following exemplary reasons:

- a. Craft Smith's Recollections Planners' covers have distinct graphical designs compared to EC Design's LifePlanner covers;
- b. EC Design does not and cannot have copyrights in an interchangeable cover style in plastic laminate material, which is removable by tearing away slices from a coil, as such features are barred from being copyright eligible for being functional;
- c. Craft Smith's Recollections Planners' covers clearly state that the product is marketed under the Recollections Brand, and utilizes a distinctly shaped information placard that is not similar to EC Design's LifePlanner placard;
- d. Craft Smith's Recollections Planners' inside covers have distinct graphical designs compared to EC Design's LifePlanner's inside covers;
- e. Craft Smith's Recollections Planners' contain monthly tabbing arranged in a different manner than EC Design's LifePlanners' monthly tabbing, and utilize a different color scheme;
- f. EC Design provides no evidence that its use of the motivational quote "The Best Time for New Beginnings is Now" is copyrighted or copyrightable and that it is the owner of any such alleged copyright. Furthermore, Craft Smith's Recollections Planners use of the motivational quote "The Best Time for New

Beginnings is Now" and associated graphical arrangement were the product of Craft Smith's own independent creation; and

- g. Craft Smith's Recollections Planners are not confusingly similar to EC Design's LifePlanners. The evidence offered by EC Design to support its allegations of likelihood of confusion demonstrates that consumers are capable of distinguishing between Craft Smith's and EC Design's products.

**First Cause of Action
(Declaratory Judgement of No Copyright Infringement)**

17. Craft Smith re-alleges and incorporates the forgoing paragraphs as though fully set forth herein.

18. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

19. Craft Smith is entitled to a declaratory judgement that it is not infringing, has not infringed, and is not liable for infringing any valid copyright owned by EC Design relating to EC Design's day planners products, including EC Design's LifePlanner Organizer product, either directly or by inducing others to infringe or by contributing to infringement by others.

**Second Cause of Action
(Declaratory Judgement of No Trade Dress Infringement)**

20. Craft Smith re-alleges and incorporates the forgoing paragraphs as though fully set forth herein.

21. As a result of the acts described in the foregoing paragraphs, there exists a substantial controversy of sufficient immediacy and reality to warrant the issuance of a declaratory judgment.

22. Craft smith is entitled to a declaratory judgement that it is not infringing, has not infringed, and is not liable for infringing any allegedly enforceable trademark or trade dress rights owned by EC Design relating to EC Design's day planner products, including EC Design's LifePlanner Organizer product, either directly or by inducing other to infringe or by contributing to infringement by others.

Prayer for Relief

Wherefore, Craft Smith prays for judgment as follows:

- A A judgment finding Craft Smith has not infringed any EC Design copyright related to EC Design's day planner products, including the LifePlanner Organizer;
- B A judgement finding Craft Smith has not infringed the trade dress of any EC Design day planner product, including the LifePlanner Organizer;
- C An award of Craft Smith's costs and attorney fees;
- D For such other and further relief as the Court deems just and equitable.

Demand for Jury Trial

Craft Smith demands a trial by jury on all claims and issues so triable.

Dated: December 8, 2016

Respectfully submitted,

MASCHOFF BRENNAN

By: /s/ Kirk R. Harris

Kirk Harris
R. Parrish Freeman
Danny Barber

Attorneys for Plaintiff
CRAFT SMITH, LLC.